

BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Natural Gas Unbundling Notice of Inquiry

D.T.E. 98-32

Final Comments of Massachusetts Senior Action

Massachusetts Senior Action continues to urge the Department to conduct an experiment in improving wholesale-level capacity resource economy, and await the results of that effort before pursuing retail competition further. Senior Action's reasons were spelled out in the letter of its counsel dated March 23, 1998. These final comments will provide information promised during the oral statement of Senior Action's attorney at the May 18 and 19 panels, respond to some of the assertions made by other participants during this inquiry, and respond to the Department's questions from Hearing Officer Urman's May 22, 1998 memorandum to all participants in the Notice of Inquiry (NOI).

I. IT IS UNFAIR TO PUNISH CUSTOMERS WITH COST-SHIFTING MERELY BECAUSE THEY DO NOT WANT TO CHOOSE THEIR GAS SUPPLIER

If consumers stop buying their gas from the LDC, and instead buy it from marketers, the marketers want the option, but not the obligation, to acquire contract rights to gas pipeline capacity on behalf of these customers. Under such a so-called "voluntary capacity acquisition" approach, the marketers would not be required to pick up capacity obligations the LDCs now maintain on behalf of the departing customers. Rather, they and the customer could choose to find some other arrangements to bring gas to the LDC's city gate (e.g. secondary capacity). In such a case, the LDC would still be responsible to pay for the capacity at maximum FERC-tariffed rates, and might not be able to offset these costs fully, even if they put the capacity out to bid or otherwise release it for other's use (and compensation). The LDC would remain responsible for the cost of the capacity it could not resell, or the difference between the resale price and the FERC tariff rates.

Getting out from under the FERC tariffed rates for existing capacity arrangements is only part of the benefit the marketers seek. In the Pooling arrangement, the marketers propose to put all the differentials between FERC tariff maximum rates and actual revenues to the LDC from disposition of unused capacity.

The marketers also propose to put interstate pipeline refunds into the Pool. These refunds now flow back to customers under the CGA. Under the marketers' proposal, they would be used to mask the Pool's effect in shifting costs from departing customers to those who continue to buy supply from the LDC.

The marketers call the unmitigated costs of abandoned capacity "transition costs." The LDCs call it "stranded costs." The customers recognize that we are talking about cost-shifting. Essentially, the marketers want the non-shopping customers to pay a premium so that the marketers can have low enough costs to beat the LDC prices as competition begins. This is simply unfair. The Department should not tolerate this outcome.

Pareto optimality is achieved in a situation where no customer can be made better off without making another worse off. As some pointed out during the oral comment phase, so long as there are benefits that can be redistributed, we have not achieved optimality. But the marketers do not propose to create benefits. They propose to saddle the non-migrating customers with costs. The Pool concept offered by the marketers puts off the day when this cost shift will occur, and mitigates it to some extent. But in the end, it grabs benefits otherwise due to firm ratepayers and shifts capacity cost burdens to existing and future LDC customers, costs that should be borne by the LDCs or by customers whose departure exposes them.

II. IF THE DEPARTMENT NONETHELESS PERSISTS IN IMPOSING RETAIL GAS UNBUNDLING, IT MUST SAFEGUARD CONSUMER PROTECTIONS AND PROTECT VULNERABLE CUSTOMERS

The experience of Ohio in residential competition is instructive. Since our March 23 comments, we have learned that the bid process for the right to serve thousands of aggregated low-income customers in one LDC's service area recently produced no bidders. Thus, the trend of responses to the low-income aggregation RFPs in Ohio has been worsening, going from a noticeable offered gas cost reduction to a modest gas cost reduction, to no bids at all. Remember that this is an aggregation in which the supplier takes no credit risk at all - the supplier supplies the LDC and is paid by the LDC, not the low-income customer. Meanwhile, the supplier has a large aggregated residential market (aggregated by the LDC), and no marketing costs beyond putting in a bid.

This experience calls into question the promise that opening retail markets to competition will serve all customers, including those with the smallest volumes or the least desirable socio-economic demographic profiles. If no bids are forthcoming for a group that is pre-aggregated, and for whom there is no credit risk, what level of marketing can we expect for individual residential customers?

IV. RESPONSES TO DEPARTMENT QUESTIONS

A. WHOLESALE CAPACITY EFFICIENCY MAXIMIZATION PILOT

1. For the policies you have advocated in this docket (here, wholesale capacity maximization pilot),
 - a. Describe the actions and the sequence of actions that need to be taken, to put those policies into effect, by
 - i. The Department

To institute a wholesale capacity efficiency program, the Department will have to direct the LDC's to undertake a bid process to secure capacity management services from firms active in gas capacity management. If there is an LDC willing to participate voluntarily, no formal proceedings are necessary. The Department can conclude this NOI with a policy statement of the intention to encourage such a pilot, setting forth the parameters it wishes to explore in such a pilot, and soliciting expressions of interest in such an undertaking. If an LDC comes forward meeting the criteria and expressing interest, the Department can request that the LDC file a specific proposal for DTE review and feedback. The Department has historically not provided pre-approval for LDC capacity acquisition strategies, beyond approvals necessary for plant siting and contract execution. It would only be necessary to hold formal proceedings if no LDC came forward with a plan that is reasonably likely to satisfy the parameters of interest to the Department.

ii. The LDCs

One or more LDCs will have to come forward with a proposal for a capacity resource efficiency enhancement bid pilot meeting the DTE's parameters. This is probable, given the gas companies' stated desire to cooperate with the DTE's movement towards greater competition, their desire and willingness to mitigate stranded costs, and their expressed interest in the concept of capacity management bidding.

iii. The marketers

Those marketers interested in participating in the pilot would have to prepare and file bids, and be prepared to undertake capacity management responsibilities if they are awarded the contract.

iv. The interstate pipelines

Interstate pipelines have no unique role in the proposal, as interstate pipelines, except to the extent that their tariffs specify an open season for capacity (e.g. the Tennessee procedure

when a customer has not renewed the entire length of a contract).

v. Customers

Customers do not have any special responsibility in a wholesale-level pilot.

vi. Other affected persons

The legislature would likely welcome any effort sponsored by the DTE designed to increase efficiency without forcing unwanted cost-shifting and other changes to the gas industry.

(b) Actual calendar time line

Mid June	DTE policy statement and solicitation of interest in offering pilot
Early July	LDC expressions of interest and proposed pilot terms due.
Late July	Hearings (if needed) on proposals
Early Aug.	DTE Order
Early Sept.	RFP
Late Sept.	Bids
Mid-Oct	Award
Nov. 1	Begin pilot

(c) Evaluate and frankly describe the feasibility of implementing the sequence you describe by November 1, 1998.

There should be some difficulty completing the process of instituting a competitive capacity management acquisition pilot by November 1, 1998. The time is short, given the need for public involvement through the DTE. However, the LDCs have expressed an interest in the concept. Blackstone Gas has already done something like this (albeit without the subdivision of the market proposed by some to prevent one marketer from cornering a future retail market).

B. LOW-INCOME AND CONSUMER PROTECTIONS IN THE EVENT OF A DECISION TO PURSUE RETAIL COMPETITION

1. For the policies you have advocated in this docket (here, consumer and low-income protections in the event of a decision to pursue retail competition),
 - a. Describe the actions and the sequence of actions that need to be taken, to put those policies into effect, by
 - i. The Department

First, we would argue that the Department must obtain legislative approval for any

proposal to move to retail competition.

A plan forwarded to the legislature should contain at least the same safeguards for residential (and low-income residential) gas customers as the safeguards the legislature enacted for residential and low-income residential electric customers in retail electricity competition. Among other things, this means that all existing consumer protections would bind the marketers as they now bind the LDC in dealings with consumers. These protections must be catalogued, and the Department must determine if they are sufficient to cover the specific situation of gas customers in retail competition.

There are safety factors with gas that are not present with electric, on the issue of LDC staffing, unbundling metering, and disconnection policy. They don't necessarily require a different policy, but before the Department makes that determination, it should look at the issues involved.

The Department would have to develop a proposal for consumer education in the gas market, and identify funding.

The Department would have to develop a proposal for default service and reliability service that ensures low-cost, reliable gas supplies for all residential customers.

The Department would have to develop a means to track the differential in rates between small customers and very large (e.g. industrial) customers, and propose a mechanism for preventing the gap from widening.

The Department would have to increase its consumer assistance staff to provide information to customers on the new structure of the gas industry and how it affects their consumer rights and responsibilities, and to mediate and determine disputes between marketers and customers.

The Department would have to develop a proposed plan and issue it for public comment, before sending it up to the legislature.

ii. The LDCs

The LDCs would have to participate in the development of the plan for the legislature's consideration. Under Massachusetts Senior Action's view of the necessary consumer and low-income protections for a retail gas market, LDCs would continue to provide metering, meter reading, billing and collection services to residential customers (although marketers could bill and collect their own charges to customers willing to receive two bills). The LDCs would continue to provide low-income discounts, as is done in the electric retail competition market. The LDCs would continue to provide DSM, including low-income DSM, as in the electric markets, and would specifically cooperate in the emerging statewide program design effort for unified DSM

services to low-income customers through the community action agencies. The LDCs might provide default services, although this function could be bid out.

The LDCs would probably provide reliability services for the system (to the extent these are not considered part of default services), although this set of functions could possibly be bid out, as well. The LDCs would have to be prepared to respond to questions concerning the different roles of various players in the market. The LDCs would continue to maintain safety responsibility for the distribution network.

iii. The marketers

The marketers would want to participate in the development of the plan for the legislature's consideration. Under Massachusetts Senior Action's view of the necessary consumer and low-income protections for a retail gas market, marketers would have to observe all current consumer protections now governing transactions between LDCs and their residential retail sales customers. Marketers might play the role of default supplier, if that function were bid out.

iv. The interstate pipelines

The interstate pipelines should participate in the development of the plan for the legislature's consideration, but are not obliged to do so. Under Massachusetts Senior Action's view of the necessary consumer and low-income protections for a retail gas market, the pipelines would have no special role in the retail sales of gas. However, LDCs and marketers would be shuffling gas capacity contracts around, and this will trigger some procedures under existing pipeline tariffs, and require negotiations at least at the expiration of existing contracts.

v. Customers

Customers would have to participate in the development of the plan for the legislature's consideration. They would have to receive marketing pitches, evaluate them, and make choices about their source of gas supply.

vi. Other affected persons

Brokers and trading organizations would have to develop a liquid and transparent secondary market behind the transactions at retail, to the extent such markets do not now exist.

b. Actual calendar time line

end of July, 1998	DTE issues policy statement, including proposed plan, and opens docket to solicit comments
2d week of Sept.	Initial round of comments due
September, 1998	Hearings on proposed retail competition plan
Early Oct. 1998	Final comments on plan
late Oct, 1998	DTE forwards plan to legislature
Spring, 1999	Legislature considers plan

- c. Evaluate and frankly describe the feasibility of implementing the sequence you describe by November 1, 1998.

It is not feasible to complete the process, including legislative approval, by November 1, 1998.

Respectfully Submitted:
MASSACHUSETTS SENIOR ACTION

BY: _____
Nancy Brockway, Esq.
Their Attorney
National Consumer Law Center
18 Tremont Street
Boston, MA 02108
617-523-8010
617-523-7398 (fax)
Nancy@nclc.org